

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FANTASIA DISTRIBUTION, INC.,	)	
	)	
Plaintiff,	)	Civil Action No.
v.	)	
	)	
RAND WHOLESALE, INC.	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF;  
DEMAND FOR JURY TRIAL**

Plaintiff Fantasia Distribution, Inc. ("Fantasia"), for its Complaint against Defendant Rand Wholesale, Inc. ("Rand"), for the unauthorized distribution and sale of counterfeit goods bearing imitations of Plaintiff's trademarks and trade dress, states and alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action for federal trademark counterfeiting and infringement, false designation of origin, and common law unfair competition pursuant to 15 U.S.C. §§ 1114, 1116, and 1125(a). This Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Fantasia's state law claims, which are substantially related to the federal claims.

2. Defendant is subject to personal jurisdiction in this District, and venue is proper in this District, because, Fantasia is informed and believes and on that basis alleges, Defendant's principal place of business is located within this District and the conduct at issue occurred within this District.

### **THE PARTIES**

3. Plaintiff Fantasia is a California corporation with its principal place of business at 1556 West Embassy Street, Anaheim, California 92802, and is duly licensed to do business in the State of Illinois. Since 2005, Fantasia has engaged in the manufacture and distribution of hookah tobacco products and, more recently, electronic hookah, or “E-Hookah,” products.

4. Fantasia is informed and believes and on that basis alleges that Rand is an Illinois corporation licensed to do business in the State of Illinois, with its principal place of business at 2489 South Wolf Road, Des Plaines, Illinois 60016.

### **NATURE OF ACTION**

5. Fantasia has spent years developing and marketing a variety of hookah tobacco flavors and, as a result, it has become one of the premier manufacturers and distributors in the hookah industry. In early 2013, Fantasia began offering electronic versions of its most popular flavors in disposable “E-Hookah” devices. The products became an immediate hit, making inroads into Fantasia’s traditional hookah products’ market share.

6. Recently, Fantasia learned that Defendant Rand has been offering what appear to be “Fantasia” E-Hookahs, at cut-rate prices far below those Fantasia has charged. Rand did not purchase the products from Fantasia. Upon investigating, Fantasia learned that the products, whose outward appearances would be indistinguishable from authorized Fantasia products to consumers, were actually of inferior quality and did not even simulate the Fantasia flavors advertised. Fantasia has therefore brought this action for trademark infringement and related causes of action under the Lanham Act and common law.

### **GENERAL ALLEGATIONS**

7. Since 2005, Fantasia has engaged in the manufacture and distribution of hookah tobacco products and, more recently, electronic hookah, or “E-Hookah,” products. Fantasia has

invested heavily in the development of its product line as well as promotional and marketing activities. As a result of these efforts, Fantasia has generated name recognition for its brands.

8. Fantasia has also applied for and obtained trademark registrations for numerous of the flavors it sells. These registered trademarks include the following:

<b>Trademark</b>	<b>Application Filed</b>	<b>Registration No.</b>	<b>Registration Date</b>
Adios	January 14, 2011	4009580	August 9, 2011
4PLAY	January 14, 2011	4009579	August 9, 2011
Ice	January 14, 2011	3998201	July 19, 2011
Magic Dragon	September 28, 2012	4346267	June 4, 2013
Surfer	January 14, 2011	4356114	June 25, 2013

9. Fantasia has been marketing and selling the disposable E-Hookah devices at issue throughout the United States under the same names it has used for the traditional hookah flavors it sells, including the registered names identified above. Each E-Hookah device contains vapor liquid that was developed to match the taste of Fantasia's hookah tobacco flavors, and each is labeled and packaged with the corresponding logos Fantasia uses for its traditional hookah products.

10. Sales of the E-Hookah product have quickly grown. In fact, it has become apparent that the market for Fantasia's hookah tobacco is being displaced by the demand for the E-Hookah devices.

11. In the latter part of 2013, Fantasia was told by one of its distributors that other companies were offering Fantasia's E-Hookah product at prices drastically lower than the price Fantasia charged. Fantasia therefore retained licensed private investigators to determine whether Fantasia's products, or products resembling Fantasia's, were being sold without Fantasia's authorization or knowledge.

12. The investigators confirmed that defendant Rand was selling products that, to the average consumer, would appear to be Fantasia's products. Although Fantasia never sold its

product to Rand, and Fantasia never authorized Rand to sell its product, Rand was offering E-Hookah devices with trade dress that was essentially identical to Fantasia's, under Fantasia's identical registered trademark names. The packaging of Rand's E-Hookah products differed only in ways that would be imperceptible to the average consumer.

13. The quality of the products Rand has been selling under Fantasia's registered and common law trademarks is substantially inferior to that of Fantasia's authorized products. As noted, Rand was also selling the product at significantly lower prices than Fantasia, which has impacted Fantasia's sales and profits.

14. In light of the foregoing, unless Rand is enjoined from continuing its counterfeit operations, Fantasia will be irreparably harmed. Fantasia has no adequate remedy at law to address the harm Rand is causing.

### **FIRST CAUSE OF ACTION**

(Trademark Infringement Under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a))

15. Fantasia realleges and incorporates by reference paragraphs 1 through 14 as though fully set forth.

16. Defendant Rand has been using counterfeit and confusingly similar imitations of Fantasia's trademarks and trade dress in commerce in connection with the promotion, distribution, offering for sale, and sale of products without Fantasia's authorization.

17. Defendant Rand's counterfeiting and infringing activities are likely to cause and actually are causing confusion, mistake, and deception among members of the electronic hookah trade and the general consuming public as to the origin and quality of Defendant Rand's counterfeit goods.

18. Defendant's unlawful actions have caused and are continuing to cause unquantifiable damages to Fantasia and are unjustly enriching Defendant at Fantasia's expense.

19. Defendant's conduct constitutes counterfeiting and infringement of Fantasia's marks in violation of Fantasia's rights under § 32 of the Lanham Act, 15 U.S.C. § 1114.

20. Fantasia has suffered and will continue to suffer irreparable injury due to Defendant Rand's activities if Rand is not preliminarily and permanently enjoined.

## **SECOND CAUSE OF ACTION**

(False Designation of Origin Under Section 43(a) of the Lanham Act,

15 U.S.C. § 1125(a))

21. Fantasia realleges and incorporates by reference paragraphs 1 through 20 as though fully set forth.

22. Fantasia is informed and believes and on that basis alleges that Defendant Rand has been selling thousands of counterfeit goods bearing imitation Fantasia marks to distributors and retailers.

23. The goods Rand is selling under Fantasia's marks are virtually identical in appearance to Fantasia's genuine goods. However, those of Defendant Rand's counterfeit goods Fantasia has obtained were of substantially inferior quality, and Fantasia is informed and believes and on that basis alleges that the remainder of Rand's counterfeit inventory is of similarly inferior quality. Accordingly, Rand's activities are likely to cause confusion in the electronic hookah trade and among the general public as to the origin or sponsorship of the counterfeit goods.

24. Fantasia is informed and believes and on that basis alleges that Defendant Rand has, in connection with its sale of the counterfeit goods, used false designations of origin and false descriptions and representations, including words or other symbols and trade dress that tend to falsely describe or represent such goods and have caused such goods to enter into commerce

with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to Fantasia's detriment.

25. Fantasia is informed and believes and on that basis alleges that Defendant Rand has misrepresented to distributors and retailers that the counterfeit goods sold are genuine, non-infringing goods, and with knowledge that such misrepresentations will be made to members of the consuming public.

26. Defendant Rand is using the counterfeits and infringements of the Fantasia marks to unfairly compete with Fantasia and others in the electronic hookah trade.

27. Defendant Rand's above-described conduct is in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

28. Fantasia has sustained injury and damage from the aforementioned conduct, and absent an entry of an injunction by this Court, Fantasia will continue to suffer irreparable injury to its goodwill and business reputation as well as monetary damages.

### **THIRD CAUSE OF ACTION**

(Common Law Unfair Competition)

29. Fantasia realleges and incorporates by reference paragraphs 1 through 28 as though fully set forth.

30. Defendant Rand's importing, promotion, distribution, sale, and offering for sale of goods bearing marks identical to Fantasia's marks, and trade dress indistinguishable from Fantasia's, has enabled Rand to unfairly compete with Fantasia and others in the electronic hookah industry.

31. Defendant Rand's infringing activities are likely to cause and actually are causing confusion, mistake and deception among members of the trade and the general consuming public

as to the origin and quality of Defendant Rand's products by their use of the Fantasia marks and packaging.

32. Fantasia has no adequate remedy at law and is suffering irreparable injury as a result of Defendant Rand's actions.

**PRAYER FOR RELIEF**

WHEREFORE, Fantasia prays for relief as follows:

**ON THE FIRST AND SECOND CAUSES OF ACTION:**

1. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendant Rand from its infringing and counterfeiting of Fantasia's marks and trade dress;
2. For compensatory damages;
3. For disgorgement of profits;
4. For attorney fees;
5. For costs of suit;
6. For such other and further relief as the Court deems proper.

**ON THE THIRD CAUSE OF ACTION:**

1. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendant Rand from its infringing and counterfeiting of Fantasia's marks and trade dress;
2. For compensatory damages;
3. For disgorgement of profits;
4. For costs of suit; and

5. For such other and further relief as the Court deems proper.

Dated: March 5, 2014

Respectfully submitted,

/s/ Andrew P. Bleiman  
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**DEMAND FOR JURY TRIAL**

Plaintiff Fantasia Distribution, Inc., hereby demands a jury trial.

Dated: March 5, 2014

Respectfully submitted,

/s/ Andrew P. Bleiman  
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